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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,372	09/08/2003	Bernard Massie	10890-1C	8255
25277 7590 08/19/2008 NATIONAL RESEARCH COUNCIL OF CANADA 1200 MONTREAL ROAD BLDG M-58, ROOM EG12 OTTAWA, ONTARIO, K1A 0R6 CANADA			EXAMINER GROSS, CHRISTOPHER M	
			ART UNIT 1639	PAPER NUMBER
			MAIL DATE 08/19/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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AUG 19 2008

NATIONAL RESEARCH COUNCIL OF CANADA
1200 MONTREAL ROAD
BLDG M-58, ROOM EG12
OTTAWA, ONTARIO K1A 0R6 CA CANADA

In re Application of: :
Massie et al. :
Serial No.: 10/656,372 : PETITION DECISION
Filed: September 8, 2003 :
Attorney Docket No.: 10890-1C :

This is in response to the petition under 37 CFR § 1.181, filed July 8, 2008, requesting that the finality of the Office action of June 20, 2008 be withdrawn.

BACKGROUND

The examiner mailed a non-final Office action on October 12, 2006 setting a three month statutory limit for reply. At the time of this non-final Office action, claims 1-20 were pending in the application. The examiner rejected claim 1 under 35 U.S.C. 102 (e) over Massie et al. and withdrew claims 2-20 as they were dependent on non-existent claims.

In response thereto on February 9, 2007, applicants amended claims 2-20 such that they were in proper dependent form and argued their amendment to the specification overcame the 102 (e) rejection.

The examiner mailed an election of species requirement on May 3, 2007 requiring applicants to elect a single disclosed species for prosecution on the merits. The examiner also indicated that while applicants claim to priority was noted, applicants did not comply with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120/121.

On June 19, 2007, applicants responded to the election of species requirement and made their election without traverse. Applicants further petitioned for consideration of their priority claim.

On August 22, 2007, the Office of Petitions dismissed applicants' petition because conditions required to grant such a petition were not satisfied.

On October 4, 2007, applicants filed a renewed petition for consideration of their priority claim.

On December 6, 2007, applicants' petition for the benefit of priority was granted.

The examiner mailed a final Office action on June 20, 2008 setting a three month statutory limit for reply. In this Office action, claim 1 was rejected under 35 U.S.C. 103 (a) as being unpatentable over Armentano et al. in view of Vogels et al. The examiner also rejected claims 2-5, 16, 17, and 19 under 103 (a) as unpatentable over Armentano et al. in view of Vogels et al. and further in view of Webster et al. Claims 8-11 and 18 were rejected under 35 U.S.C. 103 (a) as being unpatentable over Armentano et al. in view of Vogels et al. and further in view of Webster et al. and further in view of Bailey et al.

In response thereto, applicants filed this petition under 37 CFR § 1.181 on July 8, 2008, requesting that the finality of the Office action of June 20, 2008 be withdrawn.

DISCUSSION

The petition and the file history have been carefully considered.

In the petition filed on July 8, 2008, applicants argue that the Office action of June 20, 2008 raises new grounds of rejection that were neither necessitated by applicants' amendment of the claims, nor based on information submitted in an information disclosure statement. Specifically, applicants point out that the new grounds are rejections under 35 USC 103 not raised previously by the examiner. Applicants further point out that the first Office action of October 12, 2006 raised only a claim dependency issue and a 35 USC 102 issue; and the Office action of May 3, 2007 raised only a priority claim issue and a restriction requirement.

It is noted that the only amendments to the claims were to correct improper dependencies for claims 2-20 and that claim 1 was not amended. Therefore, it can not be said that applicants' amendments necessitated the new ground of rejections. Applicants' arguments are thus found persuasive that the final Office action issued June 20, 2008 was premature and, therefore, finality of the Office action will be withdrawn.

DECISION

The petition is **GRANTED**.

This application will be forwarded to the examiner for an action not inconsistent with this decision.

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 703-872-9306.

A handwritten signature in cursive script, reading "George C. Elliott". The signature is written in dark ink and is positioned above the printed name and title.

George Elliott
Director, Technology Center 1600